

REMARKS

Claims 1 to 4 are pending in the Application. The claim amendments are supported by the Specification, page 2, lines 54-57 and the examples. Consideration of the amended claims is requested in view of the following comments to issues raised in the Final Rejection dated March 16, 2004:

Rejection under 35 USC §102(e)

Claims 1- 4 were rejected under 35 USC §102(e) as being clearly anticipated by Herbst, et.al., US Patent No. 6,528,556 ("Herbst") in that Herbst discloses polymeric compositions, including EVA/carbon monoxide copolymers, which contain a biocidal agent in an amount of 0.1 to 10% by weight and Applicants' claim term "comprising" does not exclude from the claimed composition biocide combinations disclosed in Herbst.

Applicants do not agree with the conclusion that Herbst discloses Applicants' invention. Herbst discloses a process for biocidally finishing plastic materials by adding to the plastic materials at least one biocide selected from among four different *s*-triazine biocides. The four *s*-triazines are 2-methylthio-4-cyclopropylamino-6-(α,β -dimethylpropylamino)-*s*-triazine, 2-methylthio-4-cyclopropylamino-6-tert-butylamino-*s*-triazine, 2-methylthio-4-ethylamino-6-tert-butylamino-*s*-triazine, and 2-methylthio-4-ethylamino-6-(α,β -dimethylpropylamino)-*s*-triazine. Thus, the invention of Herbst discloses only a narrow group of *s*-triazine biocides in combination with a huge variety of polymers. Herbst also discloses that additional biocides may be added, including 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one. Thus, the reference to 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one is for its use in combination with the 4 *s*-triazines in Herbst's compositions. (see col. 5, line 51 referring to active substances used in combination).

There is no specific disclosure in Herbst of any composition comprising 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one or 2-n-octyl-4-isothiazolin-3-one and any of the seven polymers in Applicants' claimed composition.

Herbst claimed invention requires the presence of the polymer and an *s*-triazine only. The composition may optionally include a third biocide which *may* be, among many others, 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one. (see Claim 1 and col. 5, line 39 to col 6, line 6) Applicants' invention does not require the presence of an *s*-triazine. As now amended, Applicants' composition is limited to those in which 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one

and 2-n-octyl-4-isothiazolin-3-one represent the only biocide present. Because Herbst does not disclose the use of 4,5-dichloro-2-n-octyl-4-isothiazolin-3-one or 2-n-octyl-4-isothiazolin-3-one immobilized in one or more of the seven specific polymers *in the absence of an s-triazine*, which is Applicants' invention, Herbst does not anticipate Applicants' invention. Applicants respectfully request that the rejection under 35 USC §102(e) be withdrawn.

Applicants believe that the issues raised in the Final Rejection have been overcome and the amended claims are in condition for allowance. Should the Examiner have any suggestions which may put the Application in better condition for allowance, Applicants' attorney is willing to discuss any such suggestions either by phone or at the U. S. Patent and Trademark Office.

Respectfully submitted,



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